

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In Re:)
)
Richard K. Cavaluzzi,) Case No. 05-60826-293
)
 Debtor.) Chapter 7
)
Mary Ann Weems,)
)
 Plaintiff,) Adversary No.
v.)
)
) Kimber H. Baro
) Attorney for Plaintiff
Richard K. Cavaluzzi,) 1113 Howdershell Road
)
 Defendant.) Florissant, MO 63031
) (314) 831-2277

**COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT UNDER 11
U.S.C. SECTIONS 523 (a) 5 and 523 (a)(15)**

Comes now Plaintiff, by her attorney, and for her complaint states as follows:

JURISDICTION

1. This Court has jurisdiction pursuant to 28 U.S.C. Section 1334(b), 11 U.S.C. Section 523, and Bankruptcy Rule 7001(6). This is a core proceeding pursuant to 28 U.S.C. Section 145(b)(2)(1). This Court has venue pursuant to 28 U.S.C. Section 1409(a).

FACTS

2. On February 17, 2004 the St. Louis County Family Court , State of Missouri entered its Modification Judgment and Declaratory Judgment regarding the dissolution of marriage of Richard K. Cavaluzzi and Tammy Jo Cavaluzzi, Cause No. 689195. The Debtor appealed said judgment. On March 15, 2005 the Missouri Court of Appeals, Eastern District, issued an Order affirming the judgment of the trial court, No. ED84554.

3. Plaintiff Mary Ann Weems is an attorney authorized to practice law in the State

of Missouri who represented the debtor's ex-wife, Tammy Jo Cavaluzzi, in the above trial and appellate proceedings. On February 11, 2005 Plaintiff Weems filed a motion for her attorneys fees on appeal in the St. Louis County Family Court against the Debtor in the sum of \$7,500.00. The trial judge has currently stayed Plaintiff Weems motion due to the filing of Debtor's chapter 7 case.

4. The issues raised by the Debtor in the modification proceeding in the St. Louis County Family Court, and on appeal in the Missouri Court of Appeals, concerned the Debtor's obligation to pay child support to his ex-wife for their three children, and the issue of back child support owed by the Debtor. Both the trial court and the appellate court found that the Debtor had a duty to pay child support, and both courts found that the Debtor owed back child support to his ex-wife in the sum of \$26,000.00. The attorneys fees incurred Plaintiff Weems on behalf of debtor's ex-wife were incurred as the direct result of defending and litigating the modification proceeding initiated by Debtor, and the appeal initiated by Debtor, and were necessary to defend Debtor's ex-wife's right to receive child support from Debtor and to collect back child support owed by the Debtor. Thus said attorneys fees are in the nature of support.

5. The attorney fees owed to Plaintiff Weems should be non-dischargeable under 11 U.S.C. Section 523(a)(15) because:

- a. These debts were incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement , divorce decree or other order of a court of record, or under a determination made in accordance with State or territorial law by a governmental unit: and
- b. Debtor has the ability to pay these debts: and
- c. Discharging these debts result in detrimental consequences to the

Debtor's ex-wife which outweigh any benefit to the Debtor.

WHEREFORE, Plaintiff Mary Ann Weems prays the Court enter its judgment in favor of Plaintiff and against Debtor Richard K. Cavaluzzi holding that:

- a. The attorneys fees incurred by Plaintiff in litigating the appeal filed by Debtor in the Missouri Court of Appeals are in the nature of support and are non-dischargeable: and
- b. Plaintiff is entitled to and should be awarded her costs and attorney's fees in connection herewith, and for such other and further relief as may be just and proper.

Respectfully Submitted,

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